

REMARKS

This application has been reviewed in light of the Office Action dated October 21, 2003. Claims 1-16 are presented for examination. Claims 1, 4, and 7-16, all of which are independent, have been amended to define more clearly what Applicant regards as his invention. Favorable reconsideration is requested.

Claims 1-16 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite, and particularly, for containing language related to the “performance of” an Entertainment Production. Applicant has revised this language to recite “profits made by” an Entertainment Production. Support for this amendment is found at page 7, lines 25 *et seq.*, discussing a motion picture (entertainment production), in which the return is related to “the relationship between the production cost of such motion picture and the cumulative total U.S. and Canadian ‘Box Office Gross Receipts’ generated by such motion picture,” i.e., the profits made by the motion picture. Of course, “profits” is not to be limited to this specific example, but instead should take on its ordinary and customary meaning in the art, and may include a contractually-set indexed return, or any other like contingent return, as described in the application. Applicant submits that the rejection under Section 112, second paragraph, has been obviated, and its withdrawal is therefore respectfully requested.

Claims 1-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of U.S. Patent 5,950,176 (“Keiser”), for the reasons stated at pages 3-5 of the Office Action. Applicant respectfully submits that Claim 1-16, as amended, are patentable over Kaiser for at least the following reasons.

Independent Claim 1, as amended, is directed to a system including a transaction server and a plurality of information appliances. The transaction server generates data for a display of an offer to purchase a registered fixed-price interest in a share of the proceeds received by an intermediary. The proceeds are related to a payout made pursuant to a contractual interest sold by an entertainment company, which in turn is related to the profits made by the entertainment production.

The transaction server is adapted to transmit such data via a network. Each information appliance is adapted to receive via the network such data, and to transmit to the transaction server via the network a user acceptance of such an offer.

Applicant reads Kaiser as generally relating to a securities trading system with a “virtual specialist function,” and specifically to a server computer that receives buy and sell orders via a network for derivative financial instruments from a plurality of client computers (see Abstract). The server computer matches the buy orders to the sell orders and then generates a market price through the use of the virtual specialist program, which responds to an imbalance in the matching of buy and sell orders (see Abstract). This is said to lessen the price volatility of the derivative financial instruments when traded in a narrow market (see col. 1, lines 48-50). Specifically, Kaiser’s system sets a market price based on the supply and demand of the derivative financial instruments, and participates in the market as a trader to minimize the price volatility (col. 2, lines 20-24).

One embodiment of Kaiser’s system is the so-called “Hollywood Stock Exchange,” a computer simulation where stocks representing movies, actors, etc. may be traded (col. 2, lines 25 *et seq.*) While Kaiser indicates in passing that the Hollywood Stock

Exchange may be an “actual trading system” and that the stocks may be traded with actual “dollars” (col. 2, line 27-29), to date, in the United States it is merely an Internet fantasy game used to forecast box office receipts (see November 23, 2003 article regarding the Hollywood Stock Exchange entitled “Business: It’s Just a Game, but Hollywood is Paying Attention@). One chief reason why no “real” system, that is an exchange that trades actual stock with real money, exists, and why Kaiser does not enable the same, is that there is no stock registration scheme disclosed that would comply with U.S. (Federal) and state security laws.

The presently-claimed invention provides such a system, and differs from Kaiser in numerous ways. Applicant has amended the claims to make even more clear the differences between Kaiser’s trading system and his invention. Applicant submits, however, that these clarifying amendments do not narrow the scope of his invention.

In particular, Applicant has changed “first” interest to --registered fixed-price-- interest. This contrasts with Kaiser in two respects. First, unlike Kaiser, the interest (for example, a “Participation Trust Unit”, as described at page 6, lines 27 -31, of the specification) is registered (with the SEC or other federal/state authority). This permits the system to be *real* financing system in the United States, and not a fantasy game or simulation like Kaiser’s Hollywood Stock Exchange. Secondly, unlike Kaiser, the present invention is not a trading system, and specifically, the interest has a fixed-price per unit (for example, \$50 or \$100 per unit). That is, the interest’s price is not a volatile market price based on supply and demand of the interest, and thus, unlike Kaiser, there is no speculation

on the interest itself, and no participation by the system itself is required to minimize market price volatility or otherwise.

Another difference between Kaiser and the present invention is the use of the claimed “intermediary” between the buyers of the registered, fixed price interests (e.g., the general public), and the entertainment companies who create and sell the claimed contractual interests to the intermediary. For example, as disclosed in the application, this intermediary may be a financing entity, which buys the contractual interests from the entertainment companies in return for financing the production (the money for which is generally obtained by the financing entity from lending institutions), and in turn creates “mirror” contractual interests to a securitizing operating entity. The operating entity sells the registered, fixed-price interests to the general public. (The intermediary financing and operating entities may be the same or different entities). As explained in the application, in this example, the intermediary, rather than the entertainment company, bears the risk of loss of a shortfall if the registered, fixed-price interests are undersold.¹ Kaiser does not teach or suggest the use of an intermediary, or the contractual interest, both of which are recited in independent Claim 1.

Accordingly, Applicant submits that amended Claim 1 is patentable over Kaiser. Further, amended independent claims 4 and 7-16, which also recite the registered, fixed-price interests, the contractual interests, and the intermediary, are patentable for at least the same reasons as Claim 1.

¹ An intermediary bearing the risk of loss is merely an example of one type of intermediary. It is not necessary to the practice of the claimed invention that an intermediary be configured to bear the risk of a financial loss, not actually sustain such a loss.

A review of the other art of record has failed to reveal anything which, in Applicant's opinion, would remedy the deficiencies of Kaiser discussed above, as a reference against the independent claims herein. Those claims are therefore believed patentable over the art of record.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Joseph S. Seltzer", is written over a horizontal line.

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